

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION (JACKSON)

LAFARGE NORTH AMERICA, INC.
Plaintiff

CIVIL ACTION NO. 3:18-cv-246-CWR-LRA

versus

JUDGE REEVES

J&J BAGGING, LLC and
JOSEPH A. MOHAMED III
Defendants

MAGISTRATE ANDERSON

**PLAINTIFF'S ORIGINAL COMPLAINT
FOR SUIT ON OPEN ACCOUNT AND SUIT ON PERSONAL GUARANTEE**

NOW INTO COURT, by and through undersigned counsel, comes Plaintiff Lafarge North America, Inc. ("**LAFARGE**"), which files this Complaint for Suit on Open Account and Suit on Personal Guarantee against J&J BAGGING, LLC ("**J&J BAGGING**") and Joseph A. Mohamed, III ("**MOHAMED**") (collectively, the "**Defendants**"). In support of the relief requested herein, LAFARGE respectfully represents:

JURISDICTION AND VENUE

1.

This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because Plaintiff is a corporation incorporated under the laws of the State of Maryland with its principal offices in the State of Michigan and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

2.

Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because (a) all Defendants are residents of Mississippi and this is the judicial district where one or more Defendants reside, (b) this is the judicial district in which a substantial part of the events or omissions giving rise to LAFARGE'S claims occurred, and (c) this the judicial district which the Defendants members, upon information and belief, are subject to personal jurisdiction.

PARTIES

3.

LAFARGE is a corporation incorporated under the laws of the State of Maryland with its principal offices in the State of Michigan and is duly registered and conducts business as a foreign entity in the State of Mississippi.

4.

J&J BAGGING, LLC is a limited liability company organized and existing under the laws of the State of Mississippi, conducting business in Yazoo County, Mississippi and whose members, upon information and belief, are all citizens of Mississippi.

5.

JOSEPH A. MOHAMED, III is an individual of the full age of majority and a resident of the County of Yazoo, State of Mississippi.

FACTUAL BACKGROUND

6.

LAFARGE agreed to provide materials on open account to J&J BAGGING pursuant to an Application for Open Terms executed by MOHAMED on behalf of J&J BAGGING and a

Continuing Guaranty which was separately executed by MOHAMED individually as the unconditional personal guarantor of J&J BAGGING on or about March 21, 2017 (collectively, the “*Application*”). A true and correct copy of the Application is attached hereto and incorporated by reference herein as **EXHIBIT A**.

7.

The Application was valid and binding between the parties and LAFARGE has fully performed all obligations in providing materials on open account thereunder.

8.

The Application as well as the face of each LAFARGE invoice provide that payment for all materials invoiced on open account is due within thirty (30) days from invoice date and further provide that interest/late fees may accrue on all invoiced amounts that are past due at a rate of one and one-half percent (1.5%) per month.

9.

The Application further provides that LAFARGE may recover all attorneys’ fees, court costs and other charges if the open account created thereunder is placed in the hands of an attorney for collection.

CLAIM No. 1
(Suit on Open Account)

10.

All of the allegations contained in the preceding paragraphs are re-alleged and incorporated by reference.

11.

LAFARGE provided materials on open account to J&J BAGGING pursuant to the Application for which J&J BAGGING owes LAFARGE the principal sum of Seventy Eight Thousand Two Hundred Eighty and 18/100 Dollars (\$78,280.18), plus interest as of April 9, 2018. An account statement reflecting the principal (excluding interest) balance due is attached hereto and incorporated by reference herein as **EXHIBIT B**.

12.

LAFARGE made demand for payment upon J&J BAGGING and MOHAMED by correspondence dated February 16, 2018 (the “*Open Account Demand*”). A copy of the Open Account Demand is attached hereto and incorporated by reference herein as **EXHIBIT C**.

13.

Despite amicable demand to J&J BAGGING and MOHAMED, LAFARGE only received one payment of Nine Thousand and 00/100 Dollars (\$9,000.00) and the amount due and owing to LAFARGE has never been fully paid.

14.

Pursuant to the Application and the open account created thereunder, LAFARGE is entitled to recover from J&J BAGGING the principal sum of Seventy Eight Thousand Two Hundred Eighty and 18/100 Dollars (\$78,280.18), plus interest/late fees accruing on all past due invoices at the rate of one and one-half percent (1.5%) per month.

15.

Pursuant to the Application, LAFARGE is also entitled to recover its attorneys' fees in an amount equal to fifteen percent (15%) of the principal and interest due plus court costs and other charges incurred in collection of all outstanding sums due on open account from J&J BAGGING.

CLAIM No. 2

(Suit on Continuing Guaranty of JOSEPH A. MOHAMED III)

16.

All of the allegations contained in the preceding paragraphs are re-alleged and incorporated by reference.

17.

In consideration for LAFARGE'S sales to J&J BAGGING on open account pursuant to the Application, MOHAMED executed the individually and unconditionally guaranteed the prompt payment of that account if not paid when due by J&J BAGGING.

18.

Accordingly, LAFARGE is entitled to recover from MOHAMED the principal sum of Seventy Eight Thousand Two Hundred Eighty and 18/100 Dollars (\$78,280.18), plus interest accruing on all past due invoices at the rate of one and one-half percent (1.5%) per month.

19.

In further consideration for LAFARGE'S sales to J&J BAGGING on open account pursuant to the Application, MOHAMED individually and unconditionally guaranteed and agreed to pay attorneys' fees in an amount equal to fifteen percent (15%) of the principal and interest due

plus court costs and other charges incurred in collection of all outstanding sums due on open account from J&J BAGGING.

CLAIM No. 3
(Quantum Meruit and/or Unjust Enrichment)

20.

All of the allegations contained in the preceding paragraphs are re-alleged and incorporated by reference.

21.

In the alternative, and only in the event that LAFARGE'S claim set forth above is deemed to be insufficient, LAFARGE submits that it is entitled to relief under the theory of quantum merit and/or unjust enrichment.

22.

J&J BAGGING and MOHAMED have been enriched by LAFARGE'S provision of materials for which LAFARGE has not been paid.

23.

LAFARGE has been impoverished by providing J&J BAGGING and MOHAMED with such materials and such impoverishment was caused by J&J BAGGING and MOHAMED'S failure to provide LAFARGE with payment therefore.

24.

There is a complete absence of justification for the enrichment or impoverishment, and there is no other remedy available to Lafarge under law.

WHEREFORE, Plaintiff, LAFARGE NORTH AMERICA, INC. prays for a money judgment in its favor and against the Defendants as follows –

1. Against Defendant J&J BAGGING, LLC pursuant to Claim No. 1 –
 - a. the principal sum of Seventy Eight Thousand Two Hundred Eighty and 18/100 Dollars (\$78,280.18); plus
 - b. additional sums equal to interest accruing on all past due invoices at the rate of one and one-half percent (1.5%) per month from their respective due dates to the date of judgment entry; plus
 - c. additional sums equal to fifteen percent (15%) of the principal and interest awarded hereunder for attorneys' fees incurred in bringing this action and obtaining judgment; plus
 - d. expenses and court costs incurred in collecting this account; plus
 - e. post-judgment interest on all outstanding amounts awarded hereunder at the maximum legal rate from the date of judgment entry until the judgment is fully satisfied; plus
 - f. post-judgment attorneys' fees, expenses and court costs incurred in the collection of any amounts awarded hereunder; and
2. Against Defendant JOSEPH A. MOHAMED III pursuant to Claim No. 2 – That JOSEPH A. MOHAMED III be held jointly and severally liable with J&J BAGGING, LLC pursuant to the Contract for any and all amounts awarded pursuant to the First Claim for Relief hereunder; and
3. For such other and further legal or equitable relief as this court shall deem just and proper.

Respectfully submitted,

**GORDON, ARATA, MONTGOMERY, BARNETT,
MCCOLLAM, DUPLANTIS & EAGAN, LLC**

By: /s/ Terrence K. Knister

TERRENCE K. KNISTER (MS BAR # 04226)

201 St. Charles Avenue, 40th Floor

New Orleans, Louisiana 70170-4000

Email: tknister@gamb.law

Phone (504) 582-1111

Fax (504) 582-1121

And

ARMISTEAD M. LONG (LA BAR #33949)

400 East Kaliste Saloom Road, Suite 4200

Lafayette, Louisiana 70508

Email: along@gamb.law

Phone: (337) 237-0132

Fax: (337) 237-3451

Counsel for Plaintiff, Lafarge North America, Inc.